The Minutes

May 26, 2003

There were no minutes for this date.

May 27, 2003

At 9:29 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present were Blease, Associate Justice; Hull, Associate Justice; Robie, Associate Justice; and Guzman, bailiff. Calendar called.

C039727 WILMSHURST v. CENTRAL VALLEY REGIONAL, etc., et al.

Cause called. Richard E. Wilmshurst argued for himself In Pro Per. Bruce F. Reeves, Deputy Attorney General, argued for respondents. Cause submitted.

At 9:44 a.m., the court recessed. At 9:46 a.m., the court reconvened with Scotland, Presiding Justice; Blease, Associate Justice; and Hull, Associate Justice.

C038299 ISOM v. STATE OF CALIFORNIA et al.

Cause called. William C. McNeill III argued for appellant. Richard L. Manford, Deputy Attorney General, argued for respondents. Cause submitted.

At 10:11 a.m., the court recessed. At 10:15 a.m., the court reconvened with Blease, Associate Justice; Morrison, Associate Justice; and Hull, Associate Justice.

C039243 BEACH v. HARCO NATIONAL INSURANCE COMPANY

Cause called. Mark E. Ellis, argued for appellant. Eliot M. Reiner argued for respondent. Cause submitted.

At 10:37 a.m., the court recessed. At 10:43 a.m., the court reconvened with Davis, Associate Justice; Nicholson, Associate Justice; and Hull, Associate Justice.

C040299 THE PEOPLE v. EVERSOLL

Cause called. Oliver J. Northrup, court appointed counsel, argued for appellant. Natania E. Melamed Moore, Deputy Attorney General, argued for respondent. Cause submitted.

At 11:08 a.m., the court recessed. At 11:13 a.m., the court reconvened with Scotland, Presiding Justice; Nicholson, Associate Justice; and Hull, Associate Justice.

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May 27, 2003, continued

C040744 HUNSINGER v. PERSONNEL BOARD and STATE COMP. INSURANCE FUND

Cause called. Glenn F. Hunsinger argued for himself In Pro Per. James E. Tooney, Jr. argued for respondent, State Comp. Insurance Fund. Respondent, State Personnel Board, waived argument.

At 11:35 a.m., the court recessed. At 1:58 p.m., the court reconvened with Scotland, Presiding Justice; Raye, Associate Justice; and Hull, Associate Justice.

C030744 URCHIN INDUSTRIES OF CALIF. etc., et al. v. CONTRACTORS' STATE LICENSE BD et al.

Cause called. J. Anne Rawlins argued for appellants. Counsel for respondents did not appear. Cause submitted.

At 2:19 p.m., the court recessed. At 2:21 p.m., the court reconvened with Scotland, Presiding Justice; Blease, Associate Justice; and Davis, Associate Justice.

C038427 DEPT. OF THE YOUTH AUTHORITY v. KING

Cause called. Christopher E. Thomas argued for appellant. Michelle L. Hoy argued for respondent. Cause submitted.

At 2:45 p.m., the court recessed. At 2:52 p.m., the court reconvened with Davis, Associate Justice; Hull, Associate Justice; and Kolkey, Associate Justice.

C036977 REEVES et al. v. ROCKLIN UNIFIED SCHOOL DIST. et al.

Cause called. David Llewellyn argued for appellants and submitted additional citations. James B. Carr argued for respondents. Cause submitted.

At 3:33 p.m., the court recessed until 9:30 a.m., June 16, 2003.

C041435 THE PEOPLE v. MUNDO (Not for Publication)

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to delete the drug program fee, to state that the drug laboratory analysis fee is \$50, and to specify a \$50 state penalty assessment and \$35 county penalty assessment on the drug laboratory analysis fee. The trial court is further directed to forward a certified copy of the corrected abstract to the Department of Corrections.

SCOTLAND, P.J.

We concur: Sims, J.

Robie, J.

The Minutes

May 27, 2003, continued

C042660 E

BLACK DIAMOND ASPHALT, INC. v. THE SUPERIOR COURT OF SAN JOAQUIN COUNTY and CALIFORNIA INSURANCE GUARANTEE ASSOCIATION (Certified for Publication)

Let a peremptory writ of mandate issue directing the superior court to vacate its order transferring venue from San Joaquin County to Los Angeles County and to enter a new order denying CIGA's motion for change of venue. (CERTIFIED FOR PUBLICATION)

CALLAHAN, J.

We concur: Davis, Acting P.J.

Kolkey, J.

C042885

CREWS v. THE SUPERIOR COURT OF GLENN COUNTY and COUNTY OF GLENN (Not for Publication)

Let a peremptory writ of mandate issue directing the superior court to vacate its order denying the petition for writ of mandate, and to enter a new order granting the petition and otherwise consistent with the views expressed herein. The parties shall bear their own costs on review. (Cal Rules of Court, rule 56.4(a).)

CALLAHAN, J.

We concur: Scotland, P.J.

Blease, J.

May 28, 2003

C039174

THE PEOPLE v. NORMAN

(Certified for Publication)

The judgment is affirmed.

MORRISON, J.

We concur: Sims, Acting P.J.

Callahan, J.

C040031

THE PEOPLE v. CISNEROS

(Not for Publication)

The trial court's finding that the Health and Safety Code section 11383, subdivision (c) (1) prior conviction was true is vacated. That allegation may be retried. (*People v. Monge* (1997) 16 Cal. 4th 826, 829, 831-845; *Monge v. California* (1998) 524 U.S. 721, 724-734 [141 L.Ed.2d 615]; *People v. Scott* (2000) 85 Cal.App.4th 905, 924-926.) If again found true, the trial court shall reinstate its judgment. If it is found not true or if not retried, the court shall resentence defendant. In all other respects, the judgment is affirmed.

MORRISON, J.

We concur: Sims, Acting P.J.

Callahan, J.

The Minutes

May 28, 2003, continued

C040383 THE PEOPLE v. BURGER (Not for Publication)

The judgment is affirmed.

CALLAHAN, J.

We concur: Raye, Acting P.J.

Morrison, J.

C040662 THE PEOPLE v. LOWERY (Not for Publication)

The judgment is affirmed.

SIMS, Acting P.J.

We concur: Hull, J.

Kolkey, J.

C040757 THE PEOPLE v. JONES (Not for Publication)

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: Hull, J.

Kolkey, J.

C040781 THE PEOPLE v. JOHNSON (Not for Publication)

The judgment is affirmed.

MORRISON, J.

We concur: Blease, Acting P.J.

Callahan, J.

C041055 THE PEOPLE v. HAGY (Not for Publication)

The trial court is directed to amend the minute order and order of

probation... As so modified, the judgment is affirmed.

SIMS, Acting P.J.

We concur: Davis, J.

Nicholson, J.

C041215 THE PEOPLE v. ELLIS (Not for Publication)

The judgment is affirmed.

CALLAHAN, J.

I concur: Blease, Acting P.J.

I concur, except part III, in which I concur in the result.

Morrison, J.

The Minutes

May 28, 2003, continued

C041442 THE PEOPLE v. SWINDELL (Not for Publication)

The order revoking probation is reversed and the matter is remanded to

the superior court for further proceedings.

SIMS, Acting P.J.

We concur: Hull, J.

Kolkey, J.

C042277 THE PEOPLE v. JOHNSON (Not for Publication)

The judgment is affirmed.

Kolkey, J.

We concur: Davis, Acting P.J.

Morrison, J.

C037673 WELLS FARGO BANK v. CLARENDON SERVICES, INC. et al. (Not for Publication)

The judgment is modified... As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment. All parties

shall bear their own costs on appeal. (Cal. Rules of Court, rule 27(a).)

BLEASE, J.

We concur: Scotland, P.J.

Hull, J.

C039756 SIMMS et al. v. NPCK ENTERPRISES, INC. et al.

(Certified for Publication)

The order finding waiver of arbitration and granting an injunction requiring plaintiffs to relinquish possession of fixtures and equipment is reversed. Plaintiffs

shall recover their costs on appeal. MORRISON, J.

We concur: Sims, Acting P.J.

Callahan, J.

C040100 TERRY et al. v. GARCIA et al. (Certified for Publication)

The judgment is reversed. Terry shall recover costs on appeal.

MORRISON, J.

We concur: Sims, Acting P.J.

Callahan, J.

C040161 PALMER et al. v. FLEETWOOD ENTERPRISES, INC., et al. C040765 (Not for Publication)

The judgment is affirmed.

RAYE, J.

We concur: Blease, Acting P.J.

Kolkey, J.

The Minutes

May 28, 2003, continued

C038577 OAK CREEK ESTATES v. TOWN OF PARADISE et al.

C039424 BY THE COURT:

Appellants Town of Paradise et al.'s request to publish the opinion filed

on May 16, 2003, is denied.

RAYE, Acting P.J.

C041067 ENTERCOM COMMUNICATIONS CORP. v. ROYCE INTERNATIONAL

BROADCASTING CORPORATION et al.

BY THE COURT:

Appellant's petition for rehearing is denied.

SIMS, Acting P.J.

May 29, 2003

C039489 THE PEOPLE v. VAUGHN (Not for Publication)

The judgment is affirmed.

Hull, J.

We concur: Davis, Acting P.J.

Nicholson, J.

C041275 THE PEOPLE v. TAYLOR (Not for Publication)

The judgment is affirmed.

ROBIE, J.

We concur: Scotland, P.J.

Blease, J.

C041964 THE PEOPLE v. DEHART (Not for Publication)

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: Davis, J.

Hull, J.

C042284 THE PEOPLE v. NUNEZ (Not for Publication)

The trial court is directed to prepare a corrected abstract of judgment reflecting that defendant was convicted of count 3 rather than count 2 and that the court recommended defendant participate in drug and alcohol counseling. The court is further directed to forward a certified copy of the corrected abstract

to the Department of Corrections. The judgment is affirmed.

NICHOLSON, J.

We concur: Blease, Acting P.J.

Hull, J.

The Minutes

May 29, 2003, continued

C034476 ROSS et al. v. REDDING MEDICAL CENTER

(Not for Publication)

The judgment is affirmed. The Medical Center shall recover its costs on appeal.

SIMS, Acting P.J.

We concur: Kolkey, J.

Robie, J.

C038246 FAIR POLITICAL PRACTICES COMMISSION v. CALIFORNIANS AGAINST CORRUPTION et al. (Certified for Publication)

The judgment is affirmed. The FPPC's request for judicial notice is granted. Each party shall bear its own costs on appeal. (*CERTIFIED FOR PUBLICATION*)

NICHOLSON, Acting P.J.

We concur: Raye, J.

Morrison, J.

C040852 CASHMAN v. BROWN et al. (Not for Publication)

The judgment of dismissal is affirmed.

Raye, J.

We concur: Sims, Acting P.J.

Robie, J.

C041482 POWELL, JR. v. POWELL (Not for Publication)

We modify the order awarding Robert one-half the total proceeds from the Lindsey Morden settlement. He is awarded \$34,223,32 from the settlement proceeds, less his proportional share of the attorney's fees and costs incurred in that lawsuit. We reverse the award of attorney's fees pursuant to Family Code section 271. Debi is awarded her costs on appeal. (Cal. Rules of Court, rule 26(a).)

BLEASE, Acting P.J.

We concur: Sims, J.

Morrison, J.

C041420 In re ALBERTO L.; THE PEOPLE v. ALBERTO L.

(Not for Publication)

The judgment is affirmed.

NICHOLSON, J.

We concur: Sims, Acting P.J.

Davis, J.

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May 29, 2003, continued

C040230 THE PEOPLE v. CULLEN

(Not for Publication)

THE COURT:

It is order that the opinion filed in this case on May 7, 2003, be modified in the following respects:...

This modification changes the judgment.

Appellant's petition for rehearing is denied.

FOR THE COURT:

SCOTLAND, P.J.

Davis, J. Kolkey, J.

May 30, 2003

C036853 THE PEOPLE v. GRISSOM et al.

(Not for Publication)

In case No. NCR52137, the judgment is reversed as to Ted's convictions on counts VI (§ 487, subd. (a)) and VII (§ 368, subd. (e)). The remaining convictions are affirmed.

In case No. NCR52138, the judgment is reversed as to Dianna's convictions on counts II (§ 487, subd, (a)) and III (§ 368, subd. (e)). The remaining conviction is affirmed.

Both causes are remanded to the trial court for proceedings consistent with this opinion, including new trials if the People so elect.

KOLKEY, J.

We concur: Raye, Acting P.J.

Robie, J.

C036911

THE PEOPLE v. FERGUSON

(Certified for Publication)

The judgment is reversed and the matter remanded to the trial court with directions to suppress the evidence uncovered in the search discussed above.

MORRISON, J.

We concur: Blease, Acting P.J.

Raye, J.

C038744

THE PEOPLE v. VILLANUEVA

(Not for Publication)

Defendant's convictions for second degree robbery and obstruction of an officer are affirmed, but the sentence imposed thereon is vacated. The superior court's order, striking defendant's prior serious felony conviction for first degree burglary, is also vacated. The matter is remanded to the superior court with directions to resentence defendant in accordance with the Three Strikes law and the views expressed in this opinion.

KOLKEY, J.

We concur: Scotland, P.J.

Davis, J.

The Minutes

May 30, 2003, continued

C039196 THE PEOPLE v. PHIL (Not for Publication)

The judgment is affirmed.

RAYE, J.

We concur: Blease, Acting P.J.

Sims, J.

C040442 THE PEOPLE v. MORALES (Not for Publication)

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: Morrison, J.

Robie, J.

C040691 THE PEOPLE v. DAVIS (Not for Publication)

The judgment is affirmed.

KOLKEY, J.

I concur: Nicholson, J.

In concur in the opinion except for part I.B of the Discussion, where I concur in

the result.

SIMS, Acting P.J.

C042353 THE PEOPLE v. THOMAS (Not for Publication)

The judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment reflecting the imposition of the \$17 penalty assessment in connection with the \$10 crime prevention program fine, and to forward a certified copy thereof to the Department of Corrections.

KOLKEY, J.

We concur: Davis, Acting P.J.

Morrison, J.

C032744 COUNTY OF SACRAMENTO et al. v. SCOTTSDALE INSURANCE COMPANY (Not for Publication)

The judgment is affirmed. Scottsdale shall recover its costs on appeal.

KOLKEY, J.

We concur: Blease, Acting P.J.

Raye, J.

C038299 ISOM v. STATE OF CALIFORNIA et al. (Not for Publication)

The judgment is affirmed.

HULL, J.

We concur: Scotland, P.J.

Blease, J.

The Minutes

May 30, 2003, continued

C039035 GRAVES v. CALIFORNIA BOARD OF EQUALIZATION

(Not for Publication)

The judgment is affirmed.

MORRISON, J.

We concur: Scotland, P.J.

Kolkey, J.

C039243 BEACH v. HARCO NATIONAL INSURANCE COMPANY

(Not for Publication)

The order of the trial court is affirmed. Plaintiff is awarded his costs on appeal.

HULL, J.

We concur: Blease, Acting P.J.

Morrison, J.

C041082 JENNINGS v. SMITH et al.

(Not for Publication)

The judgment is affirmed. The matter is remanded to the trial court with directions to calculate the reasonable amount of attorney fees that Jennings incurred on appeal and to which he is entitled. The Smiths shall reimburse Jennings for his costs on appeal. (Cal. Rules of Court, rule 27(a).)

SCOTLAND, P.J.

We concur: Sims, J.

Robie, J.

C041540 YUKI FARMS v. BC STOCKING DISTRIBUTING

(Not for Publication)

The judgment is affirmed. BC Stocking shall recover its costs on appeal.

(Cal. Rules of Court, rule 27(a).)

KOLKEY, J.

We concur: Scotland, P.J.

Davis, J.

C042193 MOZINGO v. SUPERIOR COURT OF SACRAMENTO COUNTY and THE PEOPLE (Not for Publication)

Let a peremptory writ of mandate issue directing respondent superior court to vacate its order of September 10, 2002, denying petitioner's motion for appointment of counsel pursuant to section 1405, subdivision (b) (3) (A), and to enter a new order granting that motion. The alternative writ, having served its purpose, is discharged.

SCOTLAND, P.J.

We concur: Raye, J.

Morrison, J.